

EXPOSURE-DRAFT

1 Inserts for

2 **Tax Laws Amendment (2013 Measures**
3 **No. 1) Bill 2013: Strengthening scrip for**
4 **scrip roll-over, small business and other**
5 **concessions**

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7 **Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Section 4	The day this Act receives the Royal Assent.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3.		

8
9 **4 Amendment of assessments**

- 10 (1) Section 170 of the *Income Tax Assessment Act 1936* does not
11 prevent the amendment of an assessment if:
- 12 (a) the assessment was made before the commencement of Part 1
13 or 2 of Schedule 1 to this Act; and
 - 14 (b) the amendment is made within 2 years after that
15 commencement; and
 - 16 (c) the amendment is made for the purpose of giving effect to
17 that Part.
- 18 (2) Section 170 of the *Income Tax Assessment Act 1936* does not
19 prevent the amendment of an assessment if:
- 20 (a) the assessment was made before the commencement of
21 subitem 19(2) of Schedule 1 to this Act; and
 - 22 (b) the amendment is made within 2 years after that
23 commencement; and

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- 1 (c) the amendment is made for the purpose of giving effect to a
2 choice made under that subitem.
3 Note: Schedule 1 to this Act deals with the scrip for scrip roll-over, small
4 business entity and other concessions.

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1 **Schedule 1—Strengthening scrip for scrip**
2 **roll-over, small business entity and**
3 **other concessions**

4 **Part 1—Scrip for scrip roll-over**

5 *Income Tax Assessment Act 1997*

6 **1 Paragraphs 124-783(6)(b) and (c)**

7 Omit “for their own benefit”.

8 **2 Subsection 124-783(6) (note)**

9 Repeal the note.

10 **3 Subsection 124-783(7)**

11 Omit “for their own benefit”.

12 **4 Paragraphs 124-783(9)(b) and (c) and (10)(a) and (b)**

13 Omit “for their own benefit”.

14 **5 Application of amendments**

15 The amendments made by this Part apply in relation to CGT events
16 happening after 7:30 pm (by legal time in the Australian Capital
17 Territory) on 10 May 2011.

18 **6 Previous interpretation preserved**

19 To avoid doubt, the amendments of the *Income Tax Assessment Act*
20 *1997* made by this Part do not affect by implication the interpretation of
21 that Act before the amendments.

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1 **Part 2—Meaning of connected with an entity**

2 *Income Tax Assessment Act 1997*

3 **7 Paragraphs 328-125(2)(a) and (b)**

4 Omit “beneficially own, or have the right to acquire the beneficial”,
5 substitute “own, or have the right to acquire the”.

6 **8 Paragraph 328-125(8)(e)**

7 Omit “beneficially”.

8 **9 Application of amendments**

9 The amendments made by this Part apply:

- 10 (a) to the extent the amendments affect the *A New Tax System*
11 *(Wine Equalisation Tax) Act 1999*—in relation to financial
12 years commencing on or after the commencement of this
13 item; and
14 (b) to the extent the amendments affect Parts 3-1 and 3-3 of the
15 *Income Tax Assessment Act 1997* (about capital gains and
16 losses)—in relation to CGT events happening after 7:30 pm
17 (by legal time in the Australian Capital Territory) on 10 May
18 2011; and
19 (c) otherwise—in relation to the 2011-12 income year and later
20 income years.

21 **10 Previous interpretation preserved**

22 To avoid doubt, the amendments of the *Income Tax Assessment Act*
23 *1997* made by this Part do not affect by implication the interpretation of
24 that Act before the amendments.

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1 **Part 3—Entity making the gain or loss**

2 *Income Tax Assessment Act 1997*

3 **11 Subsection 104-10(7)**

4 Repeal the subsection.

5 **12 Subsection 106-30(1)**

6 After “Part and Part 3-3”, insert “(about capital gains and losses) and
7 Subdivision 328-C (What is a small business entity)”.

8 **13 Subsection 106-30(2)**

9 Omit “Part and Part 3-3”, substitute “Part, Part 3-3 and
10 Subdivision 328-C”.

11 **14 Subsection 106-30(2)**

12 Omit “it had been done by the individual”, substitute “the act had been
13 done by the individual (instead of by the trustee etc.)”.

14 **15 At the end of section 106-30**

15 Add:

16 Example: A CGT asset of an individual vests in a trustee because of the
17 bankruptcy of the individual. No CGT event happens as a result of the
18 vesting.

19 The trustee later sells the CGT asset. Any capital gain or loss is made
20 by the individual, not the trustee.

21 **16 Section 106-35**

22 Repeal the section, substitute:

23 **106-35 Effect of liquidation**

24 (1) For the purposes of this Part and Part 3-3 (about capital gains and
25 losses) and Subdivision 328-C (What is a small business entity),
26 the vesting of a company’s *CGT assets in a liquidator, or the
27 holder of a similar office under a *foreign law, is ignored.

28 (2) This Part, Part 3-3 and Subdivision 328-C apply to an act done by a
29 liquidator of a company, or the holder of a similar office under a
30 *foreign law, as if the act had been done by the company (instead
31 of by the liquidator etc.).

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1 Example: Ben, a liquidator of a company, sells a CGT asset of the company.
2 Any capital gain or loss is made by the company, not by Ben.

3 **17 Subdivisions 106-C and 106-D**

4 Repeal the Subdivisions, substitute:

5 **Subdivision 106-C—Absolutely entitled beneficiaries**

6 **Table of sections**

7 106-50 Absolutely entitled beneficiaries

8 **106-50 Absolutely entitled beneficiaries**

9 (1) For the purposes of this Part and Part 3-3 (about capital gains and
10 losses) and Subdivision 328-C (What is a small business entity),
11 from just after the time you become absolutely entitled to a *CGT
12 asset as against the trustee of a trust (disregarding any legal
13 disability), the asset is treated as being your asset (instead of being
14 an asset of the trust).

15 (2) This Part, Part 3-3 and Subdivision 328-C apply, from just after the
16 time you become absolutely entitled to a *CGT asset as against the
17 trustee of a trust (disregarding any legal disability), to an act done
18 in relation to the asset by the trustee as if the act had been done by
19 you (instead of by the trustee).

20 Example: An individual becomes absolutely entitled to a CGT asset of a trust.
21 The trustee later sells the asset. Any capital gain or loss from the sale
22 is made by the individual, not the trustee.

23 **Subdivision 106-D—Security holders**

24 **Table of sections**

25 106-60 Effect of assets being held by security holders

26 **106-60 Effect of assets being held by security holders**

27 (1) For the purposes of this Part and Part 3-3 (about capital gains and
28 losses) and Subdivision 328-C (What is a small business entity),
29 the vesting in an entity of a *CGT asset over which the entity holds
30 a security, charge or encumbrance is ignored.

31 (2) However, for the purposes of this Part, Part 3-3 and
32 Subdivision 328-C, the *CGT asset is treated as vesting in the
33 entity at a later time if, at that time, the entity, while continuing to

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1 hold the asset, ceases to hold a security, charge or encumbrance
2 over the asset.

- 3 (3) This Part, Part 3-3 and Subdivision 328-C apply to an act done by
4 an entity (or an *agent of the entity) in relation to a *CGT asset
5 over which the entity holds a security, charge or encumbrance as if
6 the act had been done by the person who provided the security
7 (instead of by the entity).

8 Example: A CGT asset of a borrower vests in a lender as security for a loan. No
9 CGT event happens as a result of the vesting.

10 If the borrower fails to make payments on the loan and the lender sells
11 the CGT asset under the security arrangement, any capital gain or loss
12 is made by the borrower, not the lender.

13 18 At the end of section 328-105

14 Add:

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|----|---------|---|
| 15 | Note 1: | See Subdivision 106-B if a CGT asset of yours is vested |
| 16 | | in a trustee in bankruptcy or a liquidator. |
| 17 | Note 2: | See Subdivision 106-C if you are absolutely entitled to a |
| 18 | | CGT asset as against the trustee of a trust. |
| 19 | Note 3: | See Subdivision 106-D if you provided security over an |
| 20 | | asset to another entity. |

21 19 Application of amendments

- 22 (1) The amendments made by this Part apply:
- 23 (a) to the extent the amendments affect the *A New Tax System*
24 *(Wine Equalisation Tax) Act 1999*—in relation to financial
25 years commencing on or after the commencement of this
26 item; and
- 27 (b) to the extent the amendments affect Parts 3-1 and 3-3 of the
28 *Income Tax Assessment Act 1997* (about capital gains and
29 losses)—in relation to CGT events happening on or after the
30 commencement of this item; and
- 31 (c) otherwise—in relation to income years commencing on or
32 after the commencement of this item.
- 33 (2) An entity may choose to have the amendments also apply, in relation to
34 the entity:
- 35 (a) to the extent the amendments affect Parts 3-1 and 3-3 of the
36 *Income Tax Assessment Act 1997*—in relation to CGT events
37 happening during the 2008-09 income year and later income
38 years; and

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(b) other than to the extent the amendments affect those Parts or the *A New Tax System (Wine Equalisation Tax) Act 1999*—in relation to the 2008-09 income year and later income years.